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For The  
Oakland-Piedmont Judicial District

JURY SERVICE

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A Manual For The Jury

OAKLAND, CALIFORNIA

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PREPARED BY  
THE JUDGES OF THE MUNICIPAL COURT  
for the  
OAKLAND - PIEDMONT JUDICIAL DISTRICT

For the Information of Prospective Jurors and to  
Encourage the Layman to a Greater Participation in  
The Administration of Justice.

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INFORMATION FOR MEMBERS OF THE JURY PANEL  
MUNICIPAL COURT FOR THE OAKLAND-PIEDMONT JUDICIAL DISTRICT

1. You will receive a written notice approximately five days before you are to appear for jury service.
2. Please note the Department number and the location of the Court each time you are summoned.
3. Your term as juror will require 10 appearances.
4. If you are not one of the twelve jurors selected, you will be excused as soon as the Jury is sworn in.  
This counts as one of the 10 appearances.
5. You will be requested to appear about once a month.
6. The length of the average case is only one day.
7. Only the twelve jurors sworn in are reimbursed; \$5.00 a day and bus fare.
8. Any change of address or telephone number should be reported to the Jury Panel Clerk.
9. If and when you are going on vacation, or plan to leave the city, please notify the Jury Commissioner's Office, Attention Jury Panel Clerk, Room 3010, Municipal Court Building, 600 Washington Street, Oakland 7, California. TE 4-5151.

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ALAMEDA COUNTY  
17 - 13th ST., OAKLAND, CALIF.

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The right to a Trial by Jury is the privilege of every person in the United States and is guaranteed by the Constitution. It is the democratic way of administering justice. In criminal cases, the jurors decide whether a person has committed the offense of which he is accused. Many disputes between one person and another, such as a suit for damages and suits on contracts, are also decided by a jury, hence jurors constitute an important part of the administration of justice.

The criminal cases, in the Municipal Court, in which you may be called to serve as a juror, are what is termed misdemeanor cases. In other words, they are cases in which the person accused, if convicted, may be fined, sent to the county jail or city prison, or granted probation. As a condition of probation, the Court may impose a fine or jail sentence. The other criminal offenses are called felonies. These are tried in the Superior Court and may involve a sentence to the State penitentiary.

In every nation where the people are free, there must be a balance between freedom and responsibility. All of us do not have an opportunity to assume responsibility in government other than through voting, or our service as a juror. It is one of the most important obligations of every citizen -- perhaps the most vital duty next to fighting in the defense of one's country.

The Courts realize that jury duty is oftentimes inconvenient, and requires some sacrifice on the part of the jurors. It is necessary, however, if we are to keep the democratic process' which guarantees our freedom.

COUNCIL OF SOCIAL PLANNING

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ALAMEDA COUNTY

337 - 13th ST., OAKLAND, CALIF.

## HOW JURORS ARE SELECTED.

Each year, the Clerk of the Court sends notices to more than 10,000 persons in the Oakland, Piedmont and Emeryville district. These names are selected from the register of voters, and each is examined as to his or her general qualifications as jurors. From this list the names of approximately 2,500 prospective jurors are then selected, having in mind previous jury service either in the Municipal or Superior Courts. Each day about 60 names are selected and these persons are notified to be present in Court on a day thereafter to serve as jurors.

In this manner a juror will be called ten times, and upon the completion of the required service, he or she is then excused. Under the present system, it is improbable that he or she will again be called until the lapse of several years. Therefore, the burden is widely distributed.

Persons summoned for jury service should not ask to be excused except for important and urgent reasons, nor should employers request that their employees be excused. If persons are excused on one occasion, they may find that they are called again at a time, more inconvenient, when the Court may refuse further consideration of their request.

The Court tries to reduce inconvenience to the jurors as far as reasonably possible. Whenever they are not likely to be needed they are excused from attendance. At times, however, jurors are required to remain on hand in order that if any trial is completed and a new case is started before the close of the day, jurors will be available. This is obviously the only way to run the Courts so that the time of Judges, parties, witnesses and jurors will not be wasted.

## THE IMPORTANCE OF JURY DUTY

Jurors should realize the importance of the part that they take in the search for justice. They should perform their duties conscientiously, seriously, fairly and impartially, without being swayed by sentiment or emotion, or being influenced by any prejudice, likes or dislikes. They must decide cases entirely on the evidence presented to them and follow the instructions of the Court as to the law.

In some respects a juror's duty is like that of a Judge. In cases in which a Judge acts without a jury, he decides both what are the facts and what is the law which governs. But in cases in which the trial is before a Judge and jury, the Judge decides the law and the jury decides what are the facts. Since in many cases the facts are the most disputed questions to be decided, the importance of the juror's duty is apparent.

## FUNCTION OF THE JURY

Jurors are called upon to serve in two kinds of cases, civil and criminal. A civil action is one in which a party called the plaintiff seeks the aid of the courts to recover money or property, or the protection of some right, from another person called the defendant. A criminal action is one in which the People of the State, as plaintiff, seek to punish the defendant for the commission of a crime. The function of the jury in both types of cases is a simple one. It is to determine the facts.

Jurors do not punish the defendant in a criminal case or render a judgment against a party in a civil action. It is the duty of the Judge to do these

things after the jury has found a defendant guilty in a criminal case or determines that one party is entitled to money or other protection from another in a civil action.

The jury has no power to determine the law applicable to a case or to question its merits, but must accept and apply the instructions of the Judge as to what the law is without regard to its individual opinions.

The ruling of the judge on objections or motions made during the course of the trial involves questions of law - not of fact - and must neither be questioned by the jury as to their correctness nor made a basis of inference for or against either side.

## QUALIFICATIONS OF JURORS

Intelligence, good eyesight and hearing are necessary qualifications for jury service. A juror, who, for lack of intelligence or education, cannot understand the evidence, or whose hearing is so impaired that he does not hear all of the testimony, cannot render an honest verdict because he is unable to meet the requirements of the law that he must consider all of the evidence. Although to a lesser degree, a juror with poor vision is similarly handicapped in performing his duty, because the conduct of witnesses and parties while on the witness stand and in the courtroom during the trial is as much a part of the evidence as is their testimony and must be so considered by the jury. It is the duty of a prospective juror whose eyesight or hearing is bad, or who doubts his ability to understand the testimony, to disclose such fact to the Judge. But above all, the most important qualification is an open and unprejudiced mind.

## PERSONAL PREJUDICE

Jurors easily recognize and frankly admit prejudices or preconceived opinions concerning the parties or the facts in a case of which they have had previous knowledge, but many have difficulty in recognizing prejudices of a more general nature such as prejudices or fixed opinions concerning races or classes of people. For instance, a juror who will not give the same credit to the testimony of a police officer which he would give to that of another person because he believes police officers as a class are inclined to lie, does not have an open and unprejudiced mind and is not fit to serve as a juror in criminal cases in which police officers appear as witnesses. Similarly, a juror who believes that the relatives and friends of a defendant in a criminal case will always lie to protect him, is not qualified to serve in such cases.

It is true that, in determining the credibility or truthfulness of witnesses, jurors have a right to consider their interest in the case and their relation to the parties, but these facts must be drawn from the evidence in the case and considered jointly with other evidence, such as the manner in which the witness testifies, his demeanor on the witness stand, the strength or weakness of his memory and his bias or prejudice for or against any party to the action, if any, as disclosed by his own testimony or other evidence, and not from any preconceived idea of the juror.

## SELECTION OF THE JURY

Each side in a trial has the right to a jury of twelve persons with open and unprejudiced minds. In the exercise of this right the parties or their attorneys are permitted to question the prospective jurors

concerning any matter which may disclose bias or prejudice or other lack of qualification on the part of the jurors. Jurors should not resent such questions, but should answer each one fully and honestly. It is no disgrace to have a prejudice and admit it, but to have it and deny it is not only dishonest but evidences an utter lack of fitness for the responsibility of jury service. Where answers to questions asked by the parties or the judge disclose some fact in connection with a juror which might affect his ability to render an impartial verdict, it is the right and duty of the parties to "challenge" such juror "for cause". This is simply a request made to the Judge that the juror be excused from service in that particular case, and if the Judge believes that the juror's ability to render an impartial verdict might be affected by the facts disclosed in his answers, then it is his duty to excuse the juror.

## PEREMPTORY CHALLENGES

In addition to challenges for cause, each party is entitled to "challenge" or excuse a certain number of prospective jurors without giving any reason whatsoever. These are known as "preemptory challenges" and are intended to further safeguard the rights of the parties by allowing them to excuse jurors whom they feel might be less favorable than others, although no specific disqualification has been brought out through questioning.

Although the word "challenge" has been used in the law for centuries, many able lawyers regard it as unfortunate and refuse to use it in the presence of the jury. Such practitioners prefer the word "excuse" as less likely to offend. Jurors should remember that

when challenges are used the parties are merely exercising a right which the law gives them, and that no reflection upon the juror is intended.

It is the duty of each juror to disclose any fact which might affect his ability to render an impartial verdict, whether he has been questioned concerning it or not, but this does not include such imaginary prejudices as that of a juror who said she believed she was disqualified to serve in an action involving a collision between two trucks because she was acquainted with a truck driver.

Before being questioned, the prospective jurors are given the following oath:

"You, and each of you, do solemnly swear that you will well and truly answer such questions as may be asked of you touching your qualifications to act as trial jurors in the cause now pending before this court, so help you God."

To violate this oath by willingly giving a false answer constitutes both perjury and contempt of court, and may be punished as either one or both.

## CONDUCT OF JURY DURING TRIAL

After the jury has been selected, the following oath is given:

"You and each of you, do solemnly swear that you will well and truly try the cause now pending before this court, and a true verdict render therein according to the evidence and the instructions of the court, so help you God."

This oath is not to be taken lightly. It presents to jurors the highest duty and the greatest responsibility imposed upon or granted to any person in this great nation, not excluding even the President. Jurors are called upon to decide questions affecting property, liberty, and life.

"You are admonished that it is your duty not to converse among yourselves or with anyone else on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to you."

The foregoing oath means exactly what it says, namely, the juror should not discuss the case with anyone before entering the jury room to deliberate. It is important that this be strictly adhered to because a violation may mean punishment for the juror, and may also require that the trial be stopped and heard before another jury.

The portion which refers to the juror forming an opinion is very important. The juror should keep an open mind at all times listening to the evidence, determining the credibility of witnesses, and weighing the evidence, having in mind that there is more evidence to come.

It is also improper for jurors to permit others to discuss the case in their presence, or to read newspaper accounts, or radio broadcasts of the case on trial. Jurors should, likewise, refrain from talking to the attorneys, or witnesses during the trial in order that such conduct not be construed to cast suspicion upon the juror.

## VISITING SCENE OF THE CASE

Jurors are not permitted to receive or consider any evidence other than that offered in court; hence a juror must not under any circumstances visit the premises or scene where the crime or transaction occurred for the purpose of getting additional information. When such conduct is brought to the attention of the Court, the Court is compelled to punish the juror, discharge the jury and re-set the case for trial which causes inconvenience and additional expense. The reason for this rule is that the parties are entitled to be present when evidence is offered and would possibly result in different conclusions being reached by individual jurors who did not see the premises or scene of the crime or transaction. Where it is deemed necessary, the Court will order an inspection of the scene or premises at which all of the parties, as well as the jurors can be present.

## QUESTIONING WITNESSES

Jurors sometimes feel that they would like to ask questions in the course of a trial. No such right exists under California law. There are many reasons why such practice is not good and is not permitted. The juror by questioning a witness may unconsciously develop a feeling for or against the witness which would render the juror unfit to return an impartial verdict. Also, the parties have competent attorneys to question witnesses and such attorneys might refrain from objecting to the question for fear that they would antagonize the juror and lose the juror's good will. If a juror desires information, he or she, should direct questions to the Court and the Court may in turn ask such questions if it is deemed proper to do so.

## ARGUMENT TO THE JURY

After conclusion of the evidence, it is customary for the attorneys to argue the case to the jury. It is natural for a lawyer to present his side of the case in the most favorable light and to endeavor to convince the jury of the merits of his contentions. It often happens that during the course of the argument lawyers mis-state the evidence as the result of imperfect memory or through inadvertence. Jurors are cautioned to rely on their own memory in such cases and at all times to be careful not to consider the argument as evidence in the case.

Jurors are frequently puzzled by the fact that the district attorney in criminal cases, and the attorney for the plaintiff in civil cases, have an opportunity to make two closing arguments to the jury, the opening and the closing argument. In criminal cases, the district attorney has the burden of proving the defendant guilty beyond all reasonable doubt, and in civil cases, the plaintiff, as the moving party, has the burden of proving his cases by a preponderance of evidence. Thus by virtue of this "burden" both have the advantage of the closing argument.

## THE JUDGE'S INSTRUCTIONS

At the conclusion of the arguments the Judge reads his instructions to the jury. The purpose of the instructions is to advise the jury concerning the law applicable to the case. The Judge is required by law to give an instruction upon each point of law involved in the case whenever a request for such instruction is made by either side.

There are some instructions stating the same proposition in different ways, or connecting it with

some other phase of the law upon which the court is required to give an instruction, the result being that in such cases it may appear to the jury that through repetition or emphasis, the Judge intends to convey to the jury his own opinion favoring one side or the other. This is not the fact and jurors are cautioned not to be influenced by what they consider to be the Judge's opinion of the case.

## COMMENTING ON EVIDENCE

It is true that in recent years Judges have been empowered to comment upon the evidence and to advise the jury of their opinions concerning the credibility of witnesses, but this practice is rarely indulged in and the jury in such cases is not bound to adopt the opinion of the court. The final responsibility continues to rest with the jury except in certain cases which rarely occur when the evidence under the law admits of only one possible verdict, in which case it is the duty of the Judge to instruct the jury as to what its verdict shall be and the duty of the jurors to follow such instructions.

## REQUIRED INSTRUCTIONS - CRIMINAL

There are certain instructions which are required by law to be given in every case.

In every criminal action the following instruction is given:

"A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal, but the effect of this presumption is only to place upon the

State the burden of proving him guilty beyond a reasonable doubt. Reasonable doubt is defined as follows: 'It is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.'"

In connection with this instruction, it has been the experience of many Judges that new jurors have difficulty in understanding it, many of them seeming to be of the opinion that before they may vote for a verdict of guilty in a criminal case, all possible doubt of the defendant's guilt must first be eliminated. A careful examination of the instruction will disclose that this is not the fact. A juror is justified, and in fact required, to vote for a verdict of guilty when, after a comparison and consideration of all the evidence, there is in his mind an abiding conviction, to a moral certainty of the defendant's guilt. The word "conviction" implies merely that the juror must be convinced, and the word "abiding" means that he must be permanently convinced to the extent that his conviction is not weakened or interrupted by recurring doubts.

It is seldom that the guilt of a defendant can be established by conclusive proof admitting of no possibility of innocence, and the prosecutor is not required to prove his case to such a certainty, but rather, to again quote the language of the instruction, he must prove it "to a moral certainty."

## CIVIL INSTRUCTIONS

In civil actions the degree of proof required to justify a verdict in favor of any party to the action is less than that required in criminal cases. In civil cases the following instruction is given:

"In civil cases a preponderance of the evidence is all that is required, that is, such evidence as, when weighed with that opposed to it, has more convincing force."

It is thus seen that in a civil action it is only necessary that the party seeking redress or protection, prove his case by a preponderance of the evidence, or in other words, that his evidence be more convincing than that of the opposing party. This does not mean that a juror should necessarily vote in favor of the side which presents the most witnesses, but rather that his verdict should be in favor of the party whose evidence carries the greatest weight or most convincing force.

It is entirely possible that in some cases a jury will believe and be convinced by one witness and decide in favor of the party in whose behalf he testifies, and against the other party who may have presented numerous witnesses whose testimony the juror does not believe, because in such a case the greater weight of the evidence considering its reliability and the credibility of the witness, is on the side of the one witness as against the greater number of witnesses. This is what is meant by "preponderance of the evidence".

## NEED FOR IMPARTIAL VERDICTS

Another instruction which is applicable to both civil and criminal cases, is the following:

"You must weigh and consider this case without regard to sympathy, prejudice, or passion, for or against either party to the action."

This is probably the most important instruction of all because if it is not complied with, a fair trial cannot be had. In times of increasing class and group consciousness, there seems to be, unfortunately, a corresponding increase in class and group prejudices. If the American jury system, representing as it does the cornerstone of American Liberty, is to survive, jurors must scrupulously guard their minds against the destructive and damaging effects of such prejudices. Sympathy, if allowed to sway the judgment, is but another name for prejudice. For instance, in damage suits between individuals and large corporations, jurors have been heard to say, after the verdict was rendered, that they decided in favor of the plaintiff and against the defendant because the plaintiff was a poor man and needed the money and defendant could well afford to pay it, or, in an action between two individuals arising out of an automobile collision, that the juror voted in favor of the plaintiff "because the defendant was undoubtedly insured and the judgment would be paid by the insurance company."

Such verdicts are not founded upon right or justice and such speculations on the part of jurors are frequently erroneous. Corporations are merely groups of individuals banded together for the purpose of carrying on a business, and a verdict against a corporation must, in the last analysis, be paid by its stockholders.

## CONDUCT OF THE JURY IN THE JURY ROOM

After the Judge has read his instructions, the marshal is given the following oath:

"You do solemnly swear that you will take charge of the jury and keep them together, that you will not speak to them yourself nor allow anyone else to speak to them upon any subject connected with the case, except by order of court, and when they have agreed upon a verdict you will return them into court, so help you God."

From this point on and until a verdict is reached, the marshal has charge of the jury and they are not permitted to communicate with any person, unless they first request permission of the court through the marshal.

After retiring to the jury room, the jury should select a foreman who will conduct their deliberations. The jurors should freely and openly discuss the case among themselves and should endeavor to refrain from any discussion which does not bear upon the evidence or its effect on their opinion. Each juror should form his or her individual opinion of the case, but their minds should remain open and receptive to the reasoning of the fellow jurors, and they should not hesitate to abandon their opinion if they find that it was based upon an erroneous concept of the evidence or the instructions of the Court.

Where there is a sharp conflict in the effect or meaning of any instruction given by the Court, the jurors, through the foreman, should request that such instruction be re-stated by the Court, in order that it is properly understood and applied to the evidence. The

foreman should not arbitrarily refuse to make such request, as it is essential that a verdict be reached, if possible, and that there be no confused thinking as to the effect of any instructions.

Trials are expensive. In civil cases, all costs, counsel fees and jury fees are paid by the parties to the action, and in criminal cases the salaries of the prosecuting attorney, the court attaches, the judge, and jury fees are paid by the county. When jurors are unable to agree upon a verdict after a reasonable period of deliberation, the case must be re-tried before another jury. Hence, it is desirable that jurors reach a verdict where they can do so without giving up their honest opinion for the mere purpose of returning a verdict. Both parties to the action are entitled to the honest and individual opinion of each juror.

## COMPROMISE OR CHANCE VERDICTS

For this reason, it is gross misconduct to determine a verdict by lot. Although any juror will realize that it is improper to do so, court records indicate that this happened; namely, a verdict by the flip of a coin. Such conduct makes it necessary to set aside such verdict and to punish the juror, or jurors, for misconduct.

For the same reason, a compromise verdict is not proper. Court records indicate that in many instances a verdict has been arrived at where one or more jurors agree to vote for a verdict if the remaining jurors will agree to a reduction of damages. In civil cases, jurors should not consider the question of damages, until they have determined which party is entitled to a verdict. They should then ballot as to the

amount of damages, if any, to be awarded. If the two subjects are considered together, it must be obvious that one will influence the other, and a compromise verdict is inevitable.

## QUESTION OF PUNISHMENT

There are no criminal cases tried in the Municipal Court in which the juror has any right or power to recommend a sentence or disposition of the convicted person. This is the sole province of the Judge. He has the record of the defendant, if during the trial circumstances have not already made such record admissible before the jury. The Judge is also better able to determine the potential of probation, a fine, or imprisonment by reason of the facilities through which rehabilitation of the convicted person is attempted. He has heard the evidence, and his experience makes it possible for him to better evaluate such evidence in determining the disposition of the case. The question of punishment must not be discussed at any time in the jury room.

## JURY VERDICTS

In all criminal cases, the verdict must be unanimous, in other words, twelve (12) jurors must vote to convict or not convict the defendant. In civil cases, however, a three-fourths vote is sufficient; in other words, if nine of the twelve agree upon a verdict in a civil case, such a verdict should be returned to the court. Upon reaching a verdict, one of the printed forms provided by the court is used to fill out the verdict. This is signed by the foreman and delivered to

the marshal, who then delivers the verdict to the clerk when the jury is returned to the court.

After the verdict is read and entered by the clerk, it is not unusual for counsel to request that the jury be polled. In this way, each juror publicly states that it is, or is not, his or her verdict.

## CONDUCT OF THE JURY AFTER VERDICT

There is no rule as to the conduct of a juror after the completion of the trial. Serious consideration of the matter, however, demonstrates that they should refrain from any discussion, unless the same be necessary. Unguarded statements by jurors are often used as the basis of charges of misconduct and motion for a new trial, in which the jurors are required to testify or furnish affidavits as to the text and meaning of the statements made.

## CONCLUSION

During the course of the trial, counsel oftentimes approach the Judge and confer with him in low tones. The purpose of this, in almost every instance, is to obtain a ruling on some matter relating to the trial, which may or may not be presented to the jury. Although such conferences may appear to the juror to be unnecessary, they frequently result in expediting the trial of the case and save unnecessary argument.

Frequently jurors complain that the lunch hour is unusually long. Jurors should keep in mind that the attorneys engaged in the case are absent from their office during the entire time of the trial, and in addition to having lunch, they must likewise return to their office and take care of phone calls and other matters necessary for the practice of their profession.

In closing, may we emphasize that this manual is not printed or distributed for the purpose of instructing the juror as to his or her conduct during the trial, or the deliberations. We realize that to many inexperienced jurors the practice and procedure of trials is puzzling; hence, we hope by this manual to point out why things are done as they are in the course of the trial, in order that the jurors may listen to the evidence and render an impartial verdict without concern as to the conduct of the trial.

It is extremely important that each juror enter into the trial of a case with the same degree of care and impartiality as they would expect from jurors if they were seeking redress in the courts, or being defended against the charge of a crime.

It is our hope that you will find your experience as a juror interesting, and we sincerely appreciate your service.

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